

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

NAVAJO NATION,)
v.)
Plaintiff,)
ANDREW WHEELER, *et al.*,)
Defendants.)

)

No. 2:20-cv-602-MV-GJF

DECLARATION OF IAN FISHER

I, Ian Fisher, declare as follows:

1. I am an attorney of record for Plaintiff Navajo Nation in the above-captioned matter filed against Defendants Andrew Wheeler, in his official capacity as Administrator of the U.S. Environmental Protection Agency; U.S. Environmental Protection Agency; Rickey Dale “R.D.” James, in his official capacity as Assistant Secretary for Civil Works, Department of the Army; and U.S. Army Corps of Engineers (together, the Agencies).

2. Attached as Exhibit 6 is a true and correct excerpted copy of H.R. Rep. No. 92-911 (1972). I downloaded the excerpts from the HathiTrust Digital Library at the following address <https://babel.hathitrust.org/cgi/pt?id=mdp.39015004456722&view=1up&seq=767>.¹

3. On February 28, 2017 EPA Administrator Scott Pruitt addressed the American Farm Bureau’s Advocacy Conference. A video of this speech is included as an attachment to a

¹ The parties agree that exhibits to this motion, response, and reply, may exceed a total of fifty pages. *See* D.N.M.LR-Civ. 10.5.

public comment letter submitted by Jon. P. Devine, which is listed in the Repeal Rule administrative record index filed by Defendants, *see* ECF No. 17, as Docket Document ID No. EPA-HQ-OW-2017-0203-13847. The video is not available online at regulations.gov based on the Agencies' assertion that it is restricted as copyrighted, <https://www.regulations.gov/document?D=EPA-HQ-OW-2017-0203-13847>. It is available at <https://www.youtube.com/watch?v=yVzz3IYrpac>.

4. On August 16, 2017 EPA Administrator Scott Pruitt appeared in a video produced by the National Cattlemen's Beef Association. This video is included as an attachment to a public comment letter submitted by Jon. P. Devine, which is listed in the Repeal Rule administrative record index filed by Defendants, *see* ECF No. 17, as Docket Document ID No. EPA-HQ-OW-2017-0203-11645. The video is not available online at regulations.gov based on the Agencies' assertion that it is restricted as copyrighted, <https://www.regulations.gov/document?D=EPA-HQ-OW-2017-0203-11645>. It is available at <https://www.youtube.com/watch?v=vTVd54WyhDQ&hd=1>.

5. Attached as Exhibit 7 is a true and correct copy of a News Release from BeefUSA.org entitled, *Take Action Now-Tell EPA to Kill WOTUS Today!*, which is an attachment to a public comment letter submitted by Jon. P. Devine, listed in the Repeal Rule administrative record index filed by Defendants, *see* ECF No. 17, EPA-HQ-OW-2017-0203-11645. The document was provided by the Agencies as it is not available online at regulations.gov based on the Agencies' assertion that it is restricted as copyrighted, <https://www.regulations.gov/document?D=EPA-HQ-OW-2017-0203-11645>.

6. Attached as Exhibit 8 is a true and correct copy of an August 14, 2017 Iowa Farm

Bureau article authored by Dirck Steimel, entitled, *EPA Leader Pledges to Rescind and Replace WOTUS Rule*, which is an attachment to a public comment letter submitted by Jon. P. Devine, listed in the Repeal Rule administrative record index filed by Defendants, *see* ECF No. 17, EPA-HQ-OW-2017-0203-11645. The document was provided by the Agencies as it is not available online at regulations.gov based on the Agencies' assertion that it is restricted as copyrighted, <https://www.regulations.gov/document?D=EPA-HQ-OW-2017-0203-11645>.

7. Attached as Exhibit 9 is a true and correct copy of the December 12, 2018 article written by EPA Administrator Andrew Wheeler entitled, *Trump Administration's Waters of the United States Rule Gives Power Back to States*, which is available online at <https://www.kansascity.com/opinion/readers-opinion/guest-commentary/article222945575.html>.

8. Attached as Exhibit 10 is a true and correct copy of a White House press release from December 11, 2018 entitled, *EPA Acting Administrator Andrew Wheeler: "Trump Administration's Waters of the United States Rule Gives Power Back to States"*, which is available online at <https://www.whitehouse.gov/briefings-statements/epa-acting-administrator-andrew-wheeler-trump-administrations-waters-united-states-rule-gives-power-back-states>.

9. Attached as Exhibit 11 is a true and correct copy of an August 11, 2017 N.Y. Times article authored by Coral Davenport and Eric Lipton, entitled, *Scott Pruitt Is Carrying Out His E.P.A. Agenda In Secret, Critics Say*, which is an attachment to a public comment letter submitted by Jon. P. Devine, listed in the Repeal Rule administrative record index filed by Defendants, *see* ECF No. 17, EPA-HQ-OW-2017-0203-11645. The document was provided by the Agencies as it is not available online at regulations.gov based on the Agencies' assertion that it is restricted as copyrighted, <https://www.regulations.gov/document?D=EPA-HQ-OW-2017-0203-11645>.

10. Attached as Exhibit 12 is a true and correct copy of an October 16, 2019 Science Advisory Board Draft Commentary on the Proposed Rule Defining the Scope of Waters Federally Regulated Under the Clean Water Act, which is listed in the Repeal Rule administrative record index filed by Defendants, *see* ECF No. 16, as an attachment to EPA-HQ-OW-2018-0149-11589. The document is available online at <https://www.regulations.gov/document?D=EPA-HQ-OW-2018-0149-11589>.

11. Attached as Exhibit 13 is a true and correct copy of the EPA Science Advisory Board's February 27, 2020, Final Commentary on the Proposed Rule Defining the Scope of Waters Federally Regulated Under the Clean Water Act, which is available online at: [https://yosemite.epa.gov/sab/sabproduct.nsf/729C61F75763B8878525851F00632D1C/\\$File/EP_A-SAB-20-002+.pdf](https://yosemite.epa.gov/sab/sabproduct.nsf/729C61F75763B8878525851F00632D1C/$File/EP_A-SAB-20-002+.pdf).

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge, information, and belief.

Executed on January 15, 2021

/s/ Ian Paul Fisher

Ian Paul Fisher, D.C. Bar No. 1672524
1319 F Street NW, Suite 300
Washington, D.C. 20004
Telephone: (202) 821-1950
Email: ifisher@jillgrantlaw.com

Attorney for Plaintiff Navajo Nation